

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 74, 76 and 78 of the)	
Commission's Rules Regarding Maintenance)	MB Docket No. 17-231
of Copies of FCC Rules)	
)	
Modernization of Media Regulation Initiative)	MB Docket No. 17-105
)	

COMMENTS



I. INTRODUCTION

The American Cable Association (“ACA”) submits these comments in response to the Commission’s Notice of Proposed Rulemaking (“NPRM”) in the above-captioned proceedings. The NPRM proposes to eliminate rules that require certain broadcast and cable entities to maintain paper copies of Commission regulations and seeks comment on this tentative conclusion.¹ In particular, the Commission tentatively concludes that it should eliminate sections of its Part 76 rules that require operators of cable systems serving 1,000 or more subscribers to maintain a current hard copy of Part 76 of the Code of Federal Regulations

¹ *Amendment of Parts 74, 76 and 78 of the Commission’s Rules Regarding Maintenance of Copies of FCC Rules; Modernization of Media Regulation Initiative*, Notice of Proposed Rulemaking, MB Docket Nos. 17-231 and 17-105 (rel. Sept. 26, 2017) (“NPRM”).

“C.F.R.”) and Emergency Alert System (“EAS”) Participants to maintain a hard copy of an EAS Operating Handbook.² The Commission further tentatively concludes that it should amend its Part 76 and Part 78 rules so that cable relay station (“CARS”) licensees are no longer required to maintain a current hard copy of Part 78. Additionally, under the NPRM’s proposals, where aeronautical obstruction markings of antennas are required by cable operators, CARS licensees would no longer be required to maintain a current hard copy of Part 17.³

ACA commends the Commission for its efforts to clear the regulatory underbrush through its Media Modernization initiative and fully supports the rule eliminations proposed in the NPRM.⁴ The requirement to maintain hard copies of the relevant portions of Parts 76 and 78 of the Commission’s rules are outdated, burdensome and environmentally suspect. There is simply no longer any rationale to require operators to print and maintain hundreds of pages when today’s digital world ensures ready electronic access to the Commission’s rules.⁵ ACA applauds these proposals as an excellent first step in the Commission’s efforts to relieve cable operators of outdated and unnecessary rules.

² *Id.*, ¶ 4; 47 C.F.R. § 76.1714(a). The Commission proposes to eliminate Section 76.1714’s requirement that EAS Participants maintain a copy of the EAS Handbook. This rule is duplicative of a separate rule in Part 11 that requires EAS Participants to keep a copy of the EAS Handbook at its EAS equipment locations. See 47 C.F.R. § 11.15. The Commission does not propose to eliminate the rule contained in Part 11.

³ NPRM, ¶ 4; 47 C.F.R. §§ 76.1714(c) & 78.67. In addition to regulations impacting cable operators and CARS licensees, the NPRM proposes eliminating requirements to maintain hard copies of FCC rules for broadcast entities, such as low power TV, TV and FM translators, and TV and FM booster stations. NPRM, ¶¶ 2-3.

⁴ These changes were first proposed by ACA and several other commenters in response to the Media Modernization Public Notice which solicited commenters to identify FCC rules that are outdated, unnecessary, or unduly burdensome, and therefore ripe for elimination or modification. *Modernization of Media Regulation Initiative*, Public Notice, MB Docket No. 17-105, 32 FCC Rcd 4406 (2017) (“Media Modernization Public Notice”); Comments of the American Cable Association at 11-12 (filed Jul. 5, 2017) (“ACA Media Modernization Comments”); Amended Reply Comments of the American Cable Association at 4-5 (filed Aug. 7, 2017). See also *Modernization of Media Regulation Initiative*, MB Docket No. 17-105, Comments of the National Association of Broadcasters at 23-24 (filed Jul. 5, 2017) (“NAB Media Modernization Comments”) (calling for elimination of the requirement that broadcasters maintain hard copies of FCC rules); Reply Comments of Frontier Communications at 5 (filed Aug. 4, 2017) (supporting ACA’s comments proposing elimination of the hard copies of FCC rules and regulations requirement).

⁵ NPRM, ¶ 4; 47 C.F.R. §§ 11.15, 76.1714(a) & (c), 78.67.

II. REGULATIONS REQUIRING CABLE OPERATORS TO MAINTAIN HARD COPIES OF FCC RULES HAVE OUTLIVED THEIR PURPOSE AND SHOULD BE ELIMINATED

As ACA noted in its Media Modernization comments, the obligation for operators of cable systems serving 1,000 or more subscribers to keep hard copies of Part 76, and for CARS licensees to keep hard copies of Part 78 and Part 17 (where aeronautical obstruction markings of antennas are required) dates back to 1972, when the Commission first adopted rules governing the then-nascent cable industry.⁶ At the time, requiring operators to maintain a paper copy of the Commission's rules as a reference would have made sense, given the Commission's adoption of a new comprehensive regulatory regime for cable.⁷ This new regime, which for the first time focused on the regulation of cable television, involved both implementing new rules and reorganizing existing rules into Part 76 – an undertaking that suggests why the Commission mandated that operators become familiar with the new rules.⁸ In the era before digitization and online access, maintaining a physical copy of the relevant portions of the C.F.R. seemed designed to facilitate operators' familiarization with the new requirements, as required under the Commission's rules.

Today, the entirety of the C.F.R. is accessible online and easily downloadable. The online Electronic C.F.R., maintained by the U.S. Government Publishing Office, ensures that up-to-date regulations are readily accessible at the click of a button.⁹ A digital copy can also be downloaded to personal computers at an operator's premises and accessed offline, with an infinite number of copies available to and accessible by operators and their employees in this

⁶ ACA Media Modernization Comments at 11, *citing Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems, et al.*, Cable Television Report and Order, 36 FCC.2d 143, Appendix A (1972) ("1972 Cable Order").

⁷ 1972 Cable Order, ¶ 191.

⁸ Sections 76.1714(a) & (c) and 78.67 state that operators and CARS licensees are expected to be familiar with the rules governing operations. The NPRM does not propose to eliminate these requirements. 47 C.F.R. §§ 76.1714(a) & (c), 78.67.

⁹ See Government Publishing Office, Electronic Code of Federal Regulations, *available at* <https://www.ecfr.gov/cgi-bin/ECFR?page=browse> (last visited Nov. 13, 2017).

manner. Furthermore, with the transition of public inspection files to the online Commission-hosted database, a direct link to Part 76 of the Electronic C.F.R. is automatically updated into each cable system's online public file. Given the multiple options for accessing the Commission's rules both online and off,¹⁰ as well as operators' increased familiarity with the cable operational rules, many of which have not substantially changed in forty years, it is clear that the hard copies requirements have outlived their purpose. As noted by the National Association of Broadcasters, while the apparent purpose of the requirement is to ensure that regulated entities are familiar with their obligations, "given the immediate availability of online access to the FCC's rules, requiring broadcasters to retain hard copies of the rules is no longer needed to fulfill this goal."¹¹

Continuing to require cable operators and CARS licensees to maintain hard copies of relevant parts of the C.F.R. is also ecologically suspect, given the sheer volume of Parts 17, 76 and 78.¹² Businesses today increasingly rely upon electronic recordkeeping for its efficiency and cost-savings,¹³ and the Commission has increasingly favored electronic information gathering and dissemination in lieu of outdated paper records, in part because of "the positive environmental aspects of saving substantial amounts of paper annually."¹⁴

¹⁰ Cable operators have on-site access to both of the aforementioned electronic sources of the C.F.R. through wireline broadband Internet access, as well as through employees' mobile service to wireless broadband Internet access if necessary. Downloaded copies of the rules can be electronically stored locally and made accessible without continual Internet connectivity.

¹¹ NAB Media Modernization Comments at 23-24.

¹² See NPRM, Statement of Chairman Ajit Pai ("Every dollar that broadcast and cable entities don't have to spend keeping paper copies of something that's an Internet search away can be spent on providing better service to the public.").

¹³ See *National Cable & Telecommunications Association and American Cable Association Petition for Declaratory Ruling*, MB Docket No. 16-126, Petition for Declaratory Ruling of NCTA and ACA at 1 (filed Mar. 7, 2016) (petitioning for declaratory ruling clarifying that the "written information" requirement of the Commission's annual notice rule encompasses electronic writings).

¹⁴ See *National Cable & Telecommunications Association and American Cable Association Petition for Declaratory Ruling*, Declaratory Ruling, 32 FCC Rcd 5269, ¶ 6 (2017) (permitting distribution of annual notices via e-mail); *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535 (2012); *Expansion of*

Given the improved accessibility to the C.F.R., operators' overall familiarity with the Commission's rules governing cable operations, and environmental considerations, the Commission is correct to have found that the rules have outlived their purpose and are no longer in the public interest, and should proceed with eliminating these requirements as proposed in the NPRM. It is also telling that no commenter responding to the Media Modernization initiative argued in favor of keeping these requirements on the books and that the NPRM pointedly asks any party opposing elimination of these rules to explain how the benefits derived from the rules, if any, outweigh the costs.¹⁵ Because the benefits of elimination outweigh any interest in maintaining the rules (none of which have thus far been identified), the Commission should adopt its proposals in the NPRM to eliminate these rules.

III. THE COMMISSION IS WISE TO ALSO PROPOSE REMOVING FROM ITS RULES ONE OF THE TWO REQUIREMENTS TO MAINTAIN A HARD COPY OF THE EAS HANDBOOK

Currently, Part 11 and Part 76 of the Commission's rules both contain provisions requiring cable operators to maintain hard copies of the EAS Operating Handbook. The NPRM proposes to further clean house by removing the requirement in Part 76 that operators of cable systems serving more than 1,000 subscribers and subject to the EAS rules maintain a copy of the EAS Operating Handbook, while leaving the Part 11 requirement intact.¹⁶ ACA fully supports this effort as well.

In addition to the requirement in Section 76.1714(a) to maintain a hard copy of the EAS Operating Handbook, Section 11.15 of the Commission's rules also requires that a copy of the EAS Operating Handbook "be located at normal duty positions or EAS equipment locations

the Online Public File Obligations To Cable and Satellite TV Operators and Broadcast and Satellite Radio Licensees, Report and Order, 31 FCC Rcd 526 (2016) (transitioning components of the public inspection file from paper to the FCC's online database).

¹⁵ See NPRM, ¶ 5 ("Parties opposing elimination of any rules discussed in this NPRM should explain how the benefits derived from such rules, if any, outweigh the costs. We note that no party in the media modernization proceeding has asserted that any of these rules should be retained.") (citations omitted).

¹⁶ *Id.*, ¶ 4.

where an operator is required to be on duty and be immediately available to staff responsible for authenticating messages and initiating actions.”¹⁷ As the Commission correctly recognizes, there is “no need for a duplicative EAS requirement” in Part 76 when that requirement is already contained in Section 11.15.¹⁸ Because the Part 76 rule is needlessly duplicative of the Part 11 rule, its removal is in the public interest.¹⁹ In the spirit of “good government,” it makes sense for the Commission to remove duplicative rules, and ACA appreciates the steps taken through the NPRM to further this important initiative.²⁰

¹⁷ 47 C.F.R. § 11.15. *See also id.*, § 76.1714(a) (requiring cable operators subject to EAS rules to maintain a copy of the EAS Operating Handbook).

¹⁸ NPRM, ¶ 4.

¹⁹ *Id.*, Statement of Commissioner Brendan Carr (supporting “the larger effort we are undertaking to modernize our media regulations and remove or streamline those rules that hinder competition, innovation, and entrepreneurship”).

²⁰ See Media Modernization Public Notice, Statement of Chairman Ajit Pai (the goal of modernizing FCC rules “in order to better promote the public interest and clear a path for more competition, innovation, and investment” is “simply good government”).

IV. CONCLUSION

The Commission's first efforts to modernize and streamline its rules for the 21st century are a much-needed step towards alleviating cable operators and CARS licensees from burdensome and outdated regulations. ACA supports the proposals in the NPRM and encourages the Commission to eliminate its requirements that regulated entities maintain hard copies of relevant portions of the Commission's rules and to remove duplicative and burdensome regulations from the books.

Respectfully submitted,

AMERICAN CABLE ASSOCIATION

By: 

Matthew M. Polka
President and CEO
American Cable Association
875 Greentree Road
7 Parkway Center, Suite 755
Pittsburgh, Pennsylvania 15220-3704
(412) 922-8300

Barbara S. Esbin
Scott C. Friedman
Elizabeth M. Cuttner
Cinnamon Mueller
1875 Eye Street, NW
Suite 700
Washington, DC 20006
(202) 872-6811

Ross J. Lieberman
Senior Vice President of Government Affairs
Mary Lovejoy
Vice President of Regulatory Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

Attorneys for American Cable Association

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